

#### **45A.695 Personal service contract procedures.**

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body, until notification of the personal service contract is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each personal service contract and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:
  - (a) The need for the service;
  - (b) The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
  - (c) The total projected cost of the contract or agreement and source of funding;
  - (d) The total projected duration of the contract;
  - (e) Payment information, in detail;
  - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
  - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (4) The head of the contracting body or his designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts and memoranda of agreement submitted to the committee for approval shall not be made for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.
- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 486, sec. 3, effective July 15, 1998, prevails over ch. 120, sec. 16, effective July 15, 1998. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 33, effective May 30, 1997. -- Amended 1992 Ky. Acts ch. 55, sec. 11, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 496, sec. 15, effective July 13, 1990.

**Legislative Research Commission Note** (7/15/98). This section was amended by 1998 Ky. Acts Chs. 120 and 486 which are in conflict. Under KRS 446.250, Acts ch. 486, which was last enacted by the General Assembly, prevails.